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SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA, THE REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)

Note by the Secretary-General

Addendum

The present addendum updates as of 2 November 1999 the information contained in the report submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and Bosnia and Herzegovina (A/54/396-S/1999/1000), in accordance with General Assembly resolution 53/163 of 9 December 1998 and Economic and Social Council decision 1999/232 of 27 July 1999. Pursuant to the requests of the Commission on Human Rights and the Council, the report will also be made available to the members of the Security Council and the Organization for Security and Cooperation in Europe.

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I. BOSNIA AND HERZEGOVINA

1. Violence targeting returnees and property remains an obstacle to return in many areas of the country. Personal security is still an issue particularly in Bosnian Croat-controlled municipalities in the western part of the country and in some parts of the Republika Srpska (RS). Local police have failed to prevent attacks and the perpetrators of crimes have neither been arrested nor prosecuted. A common feature of these municipalities is that the local police are almost entirely composed of persons belonging to the local majority ethnic group.

2. Returns to urban areas are best facilitated through repossession of property by returning pre-war owners, which requires strict implementation of property laws. This still does not occur in most of the Federation, while in the Republika Srpska it has not even started. In Banja Luka (RS), local authorities have made little effort to facilitate minority returns; for example, in 1999 there were only some 30 evictions of temporary tenants and reinstatements of previous owners. The vast majority of returns take place discreetly to the residences of relatives and friends.

3. The situation is exacerbated by poor economic prospects for returnees. Lack of employment opportunities, widespread discrimination in all areas, particularly in employment, lack of social assistance (e.g. pension rights, health services), as well as an educational system which is dominated by nationalist views are some of the problems faced by returnees to varying degrees in all areas.

4. Under strong pressure from the international community, both entities have made considerable progress on reform of laws affecting return in conformity with Annex 7 of the Dayton Agreement, but they have performed very poorly on implementation. Despite some important local breakthroughs, a lack of will by local authorities throughout the country to accept minority returns to pre-war homes, including both private and socially owned properties, is widely apparent. While registration of property claims is now largely complete in the Federation and is progressing in the Republika Srpska, progress on rendering decisions on those claims is exceedingly slow, and implementation of decisions, including evictions of current occupants of property, barely occurs at all outside of Sarajevo canton. There is a clear lack of will on the part of the authorities to tackle multiple occupancy and other forms of misallocation of housing stocks. Political intervention in the legal process in property cases has been observed throughout the country.

5. The only significant progress in restoration of property rights and return is achieved through constant pressure and supervision from international organizations and in many places, particularly in Herzegovina in the west and in parts of the Republika Srpska, international pressure is openly resisted. There is little sign of the development of a self-sustaining return process. In the Republika Srpska, the authorities have established a claim process for repossession of property by refugees and displaced persons, but the structures have not been established in all municipalities and in those where they have, they still do not operate effectively. Lack of trained staff and acute shortages of material and financial resources are other problems plaguing the

process at the municipal level. The High Representative has taken one remedial measure by extending the deadline for returnees to register to reclaim socially owned property by six months, to 19 December 1999.

6. The success of minority returns within Bosnia and Herzegovina also depends on the political will of Croatia to respect and implement Annex 7 of the Dayton Agreement. Although the Government of Croatia through various agreements has undertaken to facilitate the return of refugees to Croatia, there are still 30,000-35,000 Croatian Serb refugees in the Republika Srpska. The return of those Croatian Serbs to Croatia would undoubtedly foster minority returns to the Republika Srpska (indeed many Croatian Serbs in the RS are currently occupying houses belonging to Bosniaks and Bosnian Croats). In spite of the adoption of a return programme in June 1998, however, Croatia has failed to allow major returns of refugees to take place, primarily as a result of persistent obstructions by implementing return bodies and continuing discriminatory laws. More specifically, the assessment of the complex return process shows that ethnic Serb refugees can return to Croatia but only rarely can they repossess their properties.

Conclusion

7. There is a near-total absence of rule of law in the area of property rights in Bosnia and Herzegovina, leading to very few returns taking place. There is, furthermore, insufficient progress on eliminating discriminatory practices in relation to social and economic rights. It is of no use to repeat forever the same concrete recommendations. We can limit ourselves to the statement that the Dayton Agreement and individual decisions affecting property must be fully implemented if basic human rights are to be respected. It is alarming that four years after Dayton its mandate has still not been effectively utilized.

II. REPUBLIC OF CROATIA

8. The Special Rapporteur is concerned by the statement of the President of Croatia that Bosnia and Herzegovina should be split into three separate entities. He recalls that the President is one of the signatories to the Dayton Agreement, and wishes to stress that any attempt at undermining the agreement can only worsen ethnic tensions in Bosnia and Herzegovina and may result in further violations of human rights and possible humanitarian catastrophes.

9. Parliamentary elections in Croatia are now set for 22 December 1999. The ruling party has agreed in principle to a proposal by the opposition that a parliamentary commission be set up to oversee the pre-election campaign coverage by the electronic media. However, the ruling party disagrees with the opposition regarding the authority of the proposed parliamentary commission to issue warnings and suspend television editors who violate the rules.

10. The Croatian Parliament elected eight new judges of the Constitutional Court. Six of the judges were nominated by the ruling party and two by the "Opposition Six". The new judges were not elected individually on the basis of their capabilities, but as part of a "package". This prompted most of the

"Opposition Six" to stage a walkout before the vote, claiming that the procedure envisaged for the election had not been respected.

11. With the upcoming elections in Croatia, some 29 women's non-governmental organizations have united to form the Women's Ad Hoc Coalition focusing on monitoring and influencing the course of the elections from the perspective of women's participation in the country's public and political life. The Women's Ad Hoc Coalition proposed an amendment to the draft Election Law calling for 40 per cent representation of women on candidate lists, and also establishing that male and female candidates be listed alternately in the first eight positions on the lists.

12. The expected pre-election dissolution of Parliament may mean that the Government will not – regardless of the deadline set in the Government's Return Programme – comply with its obligation to amend three major pieces of discriminatory legislation, namely, the Law on the Status of Expelled Persons and Refugees, the Law on Reconstruction, and the Law on Areas of Special State Concern. The retention of laws which discriminate against Croatian citizens on the basis of ethnicity indicates that the equal rights of all Croatian citizens are not respected in the country. This is also an important factor inhibiting the return of Serb refugees to Croatia. Ethnic Serb returnees continue to lack effective legal remedies for the restitution of occupied property.

13. A civil court judge has finally been appointed in Donji Lapac, north of Knin. It may be hoped that the Government will take similar measures in nearby Korenica, where citizens have been denied – almost continuously since 1991 – any legal remedy for matters such as property restitution as well as administrative issues including inheritance.

14. The security situation in the Danube region is reportedly stable. However, tensions still remain in some villages around Vukovar and the number of security incidents in Sotin continues to be high. At a meeting in Sotin on 30 September – attended, among others, by the chairperson of the National Trust Establishment Commission and Serb leaders from the region – it was constructively proposed that an ethnically mixed working group of Serb and Croat residents of the village should be set up to maintain dialogue, resolve differences and facilitate the search for missing persons.

15. The Special Rapporteur considers that due process was respected in the decision of the County Court of Zagreb which, on 4 October, convicted Second World War concentration camp commander Dinko Sakic for crimes against humanity and sentenced him to the longest possible term of 20 years in prison. With regard to Mladen Naletilic ("Tuta"), the Special Rapporteur commends the 21 October ruling of the Constitutional Court that he stand trial at the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague.

16. The Special Rapporteur's attention has been drawn to the retrial of Mirko Graorac, an ethnic Serb, in the Split County Court. The Court found Mr. Graorac guilty of committing war crimes against war prisoners and the civilian population in Manjaca, a prison camp in Bosnia and Herzegovina. Both international and local observers and lawyers noted deficiencies in the application of international fair-trial standards, for instance that there was

evidence apparently obtained through torture, and a general lack of evidence of the alleged crimes. The Supreme Court returned the case to the Split County Court for retrial, but only with respect to the fact that some witnesses had testified that they had been soldiers in active service with the Croatian army at the time they were taken prisoner in Bosnia and Herzegovina in early 1992. The Supreme Court stated that the acceptance by the court of those facts could have "far-reaching consequences for Croatia", presumably because it incriminated Croatia in the war in its neighbouring country. The defendant's lawyer, despite specific requests, was neither informed nor present when the Supreme Court considered the appeal, although his presence was required by law.

17. A hunger strike of 19 prisoners of Serb ethnicity in Osijek county prison began on 18 October, initiated by the group of 12 prisoners indicted or convicted on war crimes charges who were joined by a group of prisoners charged with common crimes in some cases related to the war. The prisoners' main concerns, according to information obtained by the Office of the High Commissioner for Human Rights (OHCHR), is that their trials have not met basic standards of fairness. One of the inmates, Ivica Vuletic, has spent 7 1/2 years in detention. Two indictees from the so-called Dalj Group, Vaso Gavrilovic and Dragoljub Savic, arrested in January 1999 and visited by the Special Rapporteur one month later, are still awaiting their first main hearing. As noted in the Special Rapporteur's main report, OHCHR monitored the trial of the Sodolovci group and found, as did other international and local observers, that the trial did not meet standards of fairness.

18. The Special Rapporteur wishes to commend the ongoing discussions between the OHCHR office in Croatia and relevant government ministries on further steps in the implementation of the OHCHR technical cooperation project. The National Committee for Human Rights Education has completed a draft National Programme for Education on Human Rights and is planning to distribute it to relevant groups. In addition, the Ministry of Education is preparing a project for a human rights manual for teachers, which is to be used for teachers' training. The Ministries of Defence, the Interior, and Foreign Affairs are in the process of completing their proposals for the technical cooperation programme.

Conclusions

19. The Special Rapporteur expresses his concern with respect to the legality of the election of judges to the Croatian Constitutional Court as a "package" of eight and not individually, as is the usual practice.

20. Croatia's attempt to defer Mr. Naletilic's transfer to the ICTY appears to reinforce the perception that the country demonstrates much less enthusiasm in cooperating with investigations where the alleged perpetrators are Croats and the victims non-Croats.

21. Croatian Serbs who wish to return should be enabled to do so and the authorities in Croatia should establish conditions that would make their return possible. All returnees should have access to an effective legal remedy for the restitution of their property. The guarantee of equal rights to all citizens, whatever their ethnic affiliation, is a key measure upon which Croatia's progress in fulfilling its international commitments will be judged.

22. The Government should unequivocally demonstrate full support for all aspects of the Dayton Agreement.

23. Finally, fair access to the media and full respect for freedom of press will be especially important in the current pre-election period. Harassment of independent media should be stopped, including the use of charges that articles cause "emotional anguish" to public figures. Free media are among the main prerequisites for democratic elections. The fairness of the election's results will be evaluated, among other factors, by the equality of access of all competing parties to the media, in particular television.

III. FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)

24. Since early September, when he submitted the text of his current report to the General Assembly for translation and distribution, the Special Rapporteur conducted an additional mission to the Federal Republic of Yugoslavia (FRY) from 1 to 9 October 1999. During that mission – his sixth since March 1998 – the Special Rapporteur travelled to Belgrade, Nis, Kraljevo, Novi Pazar, Rozaje, Kosovska Mitrovica, Gnjilane, and Pristina. OHCHR staff accompanied the mission, which devoted particular attention to the situation of internally displaced persons (IDPs), detainees, individuals belonging to national minorities and the exercise of the freedoms of expression and association.

25. The Special Rapporteur arrived in Belgrade on 1 October, immediately following two nights in which police brutally beat demonstrators from the "Alliance for Change" and journalists covering the protests. He visited a demonstrator – herself an activist for refugee-IDP rights – before her surgery for injuries sustained when, after she saw police beating and kicking a demonstrator lying in the street, another police officer attacked and chased her, repeatedly beating her face and head with a truncheon. She observed that while some police officers simply waved demonstrators along to disperse them, other officers acted with targeted and unchecked brutality. Demonstrations continued in Belgrade and other cities in Serbia during the Special Rapporteur's mission. From 1 October through mid-October, however, the daily protests proceeded peacefully.

26. Although it has slipped from international headlines, the Kosovo crisis has not ended. As of the end of October, roughly 250,000 persons had been displaced since mid-June 1999 from Kosovo, a region that has rapidly lost most of its non-Albanian population. In Nis and in Kraljevo the Special Rapporteur met with the newly displaced: Serbs, Roma, Muslim Slavs (Bosniaks) and persons of "mixed" ethnicity, a category that consistently suffers in all the countries of the Special Rapporteur's mandate. The newly displaced also include Kosovo Albanians fearful of charges of "collaboration": in this regard, a recent decision of the parallel "government" controlled by the Kosovo Liberation Army (KLA) calls for expropriation of properties of "war criminals" and "collaborators". While significant differences exist as to the number of non-Albanians remaining in Kosovo, international officials have noted that incidents of violence directed at non-Albanians in Kosovo have decreased from July/August levels because there are few persons left to target. The Special Rapporteur notes here with sadness the street murder of a United Nations

official, a Bulgarian national, who was killed because he was reportedly "mistaken for a Serb".

27. The Special Rapporteur also notes with concern the increasingly violent discourse in Kosovo Albanian public life and the threatening charges of "betrayal" and "collaboration", such as those made in early October against Veton Surroi and Baton Haxhiu. For their criticism of the atrocities, these two leading democratic representatives of Kosovo Albanians were accused by "official" Kosovo Albanian media of treason and "pro-Slav sensitivity". The commentary further stated that neither of these "ordinary mobsters would go unpunished". As Koha Ditore later noted, this commentary by the Kosovo Interim Government news agency would enter the history of Kosovar journalism as the first commentary calling for murder.

28. Since July, the international presence in Kosovo has grown, as has the staff of the United Nations Mission in Kosovo (UNMIK) and its police forces. Yet the United Nations mission is still understaffed and still struggles to raise funds from the international community. UNMIK institutions of civil administration have not supplanted parallel institutions, controlled by the KLA, that were created, funded by remittances from the diaspora, and had begun levying heavy local taxes as early as July. Regional courts have begun to prosecute some common criminal cases and, in two districts, have initiated domestic war crimes proceedings. Different courts have applied different law with various interpretations, depending on the court district or presiding judge. Independent observers, including Kosovo Albanian attorneys, have raised concerns regarding judicial independence from political pressure.

29. Investigators for ICTY have concentrated their effort both on events before mid-June 1999 and on gross violations of human rights that occurred after the arrival of the international security force in Kosovo (KFOR). At this writing, however, the Tribunal had announced no indictments since its May indictment of the President of the FRY and several others.

30. Since July, with efforts by ICTY, the Organization for Security and Cooperation in Europe (OSCE) one of the four "pillars" of UNMIK, international and domestic human rights organizations, OHCHR and the Special Rapporteur, more information has emerged about tragic developments on the ground in Kosovo during the period March-June 1999. New collective and individual graves continue to be discovered daily, but many victims remain unidentified. The International Committee of the Red Cross (ICRC), OSCE and others, including the International Commission on Missing Persons (or "Dole Commission"), have been working to address the concerns of families of persons reported missing, but at this writing UNMIK had still not determined a uniform death registry procedure, including the establishment of coroners' offices in Kosovo. The sensitive issue of missing persons strains relations between all communities within Kosovo, as it has throughout all of the FRY, Bosnia and Herzegovina and the Republic of Croatia since 1991.

31. Efforts to address the situation of several thousand persons detained in Kosovo moved forward with the creation by UNMIK in late September 1999 of the Commission on Prisoners and Detainees, chaired by the OHCHR office in FRY.

Commission members, who come from cities throughout Kosovo, include attorneys, advocates, and family members of persons deprived of liberty.

32. Concerning individual cases, nothing new has been established regarding the fate and whereabouts of Ukqim Hoti. In response to inquiries, FRY authorities produced for Hoti's family and attorney a court order authorizing his release one day before the scheduled expiration of his sentence. The two international Australian CARE workers convicted and sentenced on charges of espionage were released, with official reports noting the intervention of a delegation of the Serb diaspora from Australia. Branko Jelen, the Yugoslav citizen tried and sentenced with the two Australians, remains in prison. The Special Rapporteur, the High Commissioner for Human Rights, and many others have appealed for Mr. Jelen's release.

33. The Special Rapporteur's mission ended on a disturbing note. A family member and associates of opposition leader Vuk Draskovic lost their lives in a traffic accident involving Mr. Draskovic, his family and colleagues and a lone truck whose unidentified driver fled the scene of the accident and remains at large. The accident immediately affected political discourse in Belgrade in the same way that violent allegations against Mr. Surroi and Mr. Haxhiu had affected discourse in Kosovo one week earlier, raising tensions, promoting speculation about the violent elimination of political opposition, and introducing more fear into an already tense situation. Such an atmosphere – whether in Belgrade or Pristina – does not create a fertile environment for the protection of human rights, democratization, confidence-building, or the opening-up of societies.

Conclusions

34. The situation in Kosovo can be summarized as follows: the spring ethnic cleansing of Albanians accompanied by murders, torture, looting and burning of houses has been replaced by the fall ethnic cleansing of Serbs, Roma, Bosniaks and other non-Albanians accompanied by the same atrocities. "Death to Serbs!" is the most common wall inscription now. Our problem is that this is now happening in the presence of UNMIK, KFOR and OSCE.

35. The KLA leadership in Kosovo is creating faits accomplis without regard to UNMIK's legal authority and the values which were the proclaimed basis of both the operation by the North Atlantic Treaty Organization (NATO) and the United Nations mission. The KLA has created a de facto government, appoints mayors, directors of enterprises and other officials, pursues a policy of ethnic cleansing in jobs, and supports the confiscation of property of non-Albanians and even some Albanians.

36. In Kosovo, UNMIK should appoint to posts in the provisional multi-ethnic administration only persons who have demonstrated their democratic beliefs. No one who took up arms, not to mention those who committed war crimes, should be permitted to hold any public office. The elections for all levels of administration should be postponed until stability has been achieved, people have returned home to live next to one another without fear, and a pluralistic multi-ethnic political structure has been developed. The view of the United Nations Secretary-General that the United Nations should not repeat the mistakes

made in Bosnia and Herzegovina where hard-line ethnic leaders were voted into office, should be accepted.

37. Property rights of all citizens should immediately be respected and violators of laws who expel inhabitants from their apartments or houses, or who murder, torture, rob and harass other citizens, or who burn, loot and otherwise damage the property of the others, or force people to leave their businesses so that they may confiscate them for themselves, should be arrested and punished according to the law. In the meantime, they should not be permitted by UNMIK or KFOR to keep under any pretext any property which they occupied by force or without any proper legal decision.

38. Arms in the territory of Kosovo should be progressively and comprehensively registered and confiscated. The borders with Albania and the former Yugoslav Republic of Macedonia should be controlled in order to prevent free access to Kosovo by criminals, drug traffickers and other undesirable elements from Europe and elsewhere who have been actively engaged in looting, robbery and killings of Serbs, Roma, Bosniaks, Croats and other non-Albanians.

39. The Governments of the States Members of the United Nations should send immediately to Kosovo all the necessary personnel that they promised.

40. Concerning the Federal Republic of Yugoslavia, to prevent a humanitarian catastrophe in the coming winter and to support the democratic forces, all sanctions and embargoes (except for the arms embargo) should be terminated and humanitarian aid should be promptly delivered, especially heating oil and medical supplies.